

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT  
COLORADO RIVER STORAGE PROJECT

**AMENDATORY** FUNDING AGREEMENT AND REPAYMENT CONTRACT BETWEEN  
THE UNITED STATES AND THE SAN JUAN WATER COMMISSION, NEW MEXICO

INDEX

Article Number	Article	Page
	Explanatory Recitals	1
1	General Definitions	3
2	Project Works	5
3	Conditions Precedent to Construction	7
4	Project <del>Coordinating</del> Committees	7
5	Measurement and Responsibility for Distribution of Water	10
6	Allotment and Use of Project Water	11
7	Water Right Provisions	12
8	Method of Payment for Project Construction Costs <del>Up to \$12,800,000 Under Cost Sharing Agreement</del>	13
8	<del>Method of Repayment for Project Construction Costs Exceeding \$12,800,000</del>	<del>16</del>
9	Method for Establishing Blocks for Project Repayment	19
10	Payment of Operation, Maintenance, and Replacement Costs	20
11	Disposal of Project Water During Construction by United States	21
12	Water Shortages, Waste, Seepage, and Return Flows	21
13	Levy of Assessments, Tolls, and Charges	22
14	Covenant Against Contingent Fees	22

INDEX

Article Number	Article	Page
15	Assignment Limited - Successors and Assigns Obligated	22
16	Severability	23
<b>STANDARD ARTICLES</b>		
17	Charges for Delinquent Payments	23
18	General Obligation - Benefits Conditioned Upon Payment	24
<del>19</del>	<del>Confirmation of Contract</del>	<del>24</del>
<b>19</b>	Notices	24
<b>20</b>	Contingent on Appropriation or Allotment of Funds	25
<b>21</b>	Officials Not to Benefit	25
<b>22</b>	Changes in Contractor's Organization	25
<b>23</b>	Books, Records, and Reports	25
<b>24</b>	Rules, Regulations, and Determinations	25
<b>25</b>	Quality of Water	25
<b>26</b>	Water and Air Pollution Control	26
<b>27</b>	Water Conservation	26
<b>28</b>	Equal Opportunity	26
<b>29</b>	Compliance with Civil Rights Laws and Regulations	27
	Signature Blocks	28

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
  
ANIMAS-LA PLATA PROJECT  
COLORADO RIVER STORAGE PROJECT

**AMENDATORY** FUNDING AGREEMENT AND REPAYMENT CONTRACT BETWEEN  
THE UNITED STATES AND THE SAN JUAN WATER COMMISSION, NEW MEXICO

THIS **AMENDATORY** CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, **2001**~~19~~,  
pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory  
thereof or supplementary thereto, all of which acts are commonly known and referred to as the  
Federal Reclamation Laws, between the UNITED STATES OF AMERICA, hereinafter referred  
to as the United States, represented by the officer executing this contract, and the SAN JUAN  
WATER COMMISSION, hereinafter called the Commission, located in San Juan County, New  
Mexico, a commission duly organized and existing pursuant to the laws of San Juan County and  
the State of New Mexico, acting through **their representatives** ~~the Chairman~~.

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

(a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the  
planning and investigation of the Animas-La Plata Project as a participating project of the  
Colorado River Storage Project; subsequently, the construction, operation, and maintenance of  
the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act  
of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and  
proposes to construct said Animas-La Plata Project for the storage, diversion, salvage, and  
distribution of the waters of the Animas River and the La Plata River, which Project has among  
its authorized purposes the furnishing of water for irrigation, municipal, industrial, domestic, and  
other beneficial purposes. **The water rights settlement purposes of the Project were  
authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law  
100-585) as amended by the Colorado Ute Settlement Act Amendments of 2000 (Public  
Law 106-554).**

1           **(b) The Colorado Ute Settlement Act Amendments authorize the construction of a**  
2 **reservoir, pumping plant, inlet conduit, and appurtenant facilities with sufficient capacity**  
3 **to divert and store water from the Animas River for an average annual depletion of 57,100**  
4 **acre feet of water to be used for a municipal and industrial water supply;**

5           (c) Reclamation has completed the Animas-La Plata Final Supplemental Environmental  
6 Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September  
7 25, 2000, for compliance with the National Environmental Policy Act.

8           (d) As provided by Public Law 100-585, the design and construction functions of the  
9 Bureau of Reclamation with respect to the Animas-La Plata Project shall be subject to the  
10 provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)  
11 to the same extent as if such functions were performed by the Bureau of Indian Affairs.

12           (e) The Commission has demonstrated its legal and financial capability to make the  
13 contributions and payments required by this document, by demonstrating that it is a legal entity  
14 under state law, that it has taxing authority either on its own or in conjunction with others, and  
15 that contracting parties have the capacity to put water to beneficial use under New Mexico law.

16           (f) Adequate water rights for the Project have been obtained in Colorado and New  
17 Mexico, and the United States is satisfied that any conflicts between private water rights and  
18 Project Water rights have been resolved.

19           (g) Contract No. 0-07-40-R1080, dated January 8, 1990, was judicially confirmed by a  
20 district court of the State of New Mexico, and by the New Mexico Supreme Court in San Juan  
21 Water Commission v. Taxpayers, 116 N.M. 106, 860 P.2d 748 (1993), and thus this amendment  
22 does not require judicial confirmation.

23           (h) The project will be used to provide a dependable long-term water supply for the  
24 member entities of the San Juan Water Commission as described in the July 2000 Final  
25 Supplemental Environmental Impact Statement and the September 25, 2000, Record of Decision.

26           **(icb) The San Juan Water Commission desires to amend its Contract No. 0-07-40-**  
27 **R1080 dated January 8, 1990** with the United States for a municipal and industrial water supply  
28 pursuant to the terms and conditions of **Public Law 106-554 and** the Joint Powers Agreement  
29 dated March 5, 1986, and to pay **its capital obligation through an up-front payment** for **its**  
30 **proportional share of those** Project Works necessary to **store and** deliver **its project** water and

1 for the ~~perpetual~~ right to the **storage and** use of such water in New Mexico as hereinafter  
2 provided.

3 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
4 contained, the parties hereto agree ~~as follows~~ **that this amendatory contract hereby amends,**  
5 **supercedes, and modifies Contract No. 0-07-40-R1080 dated January 8, 1990 to read as**  
6 **follows:**

### 7 8 GENERAL DEFINITIONS

#### 9 1. Where used in this contract:

10 (a) "United States" or "Contracting Officer" or either of them means the Secretary of  
11 the United States Department of the Interior or his duly authorized representative.

12 (b) "Commission" or "Contractor" means the San Juan Water Commission, San Juan  
13 County, New Mexico, created by the Joint Powers Agreement dated March 5, 1986.

14 (c) "Project" means the Animas-La Plata Project, a participating Project of the  
15 Colorado River Storage Project, **as modified by Public Law 106-554.**

16 (d) "Project Operator" means either the United States or the ~~Animas-La Plata Water~~  
17 ~~Conservancy District of Colorado, whichever is~~ **entity** operating the Project Works.

18 (e) "Project Works" means all works or facilities **as described in Public Law 106-**  
19 **554, including a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities**  
20 **with sufficient capacity to divert and store water from the Animas River for an average annual**  
21 **depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, to**  
22 **be constructed under Phase I of the Project, together with lands and rights-of-way for such**  
23 **works, as described in Article 2 herein.**

24 (f) ~~"Project Water" means all water made available from, through, or by means of~~  
25 ~~Project Works.~~

26 (fg) ~~"Project Municipal and Industrial Water" means~~ **all-Project municipal and**  
27 **industrial water made available from, through, or by means of Project Works and** furnished  
28 to the Commission for use by municipalities, organizations which provide water for rural  
29 domestic water users, industrial establishments, commercial recreation users, commercial  
30 operations, and other miscellaneous uses as the Commission sees fit.

1 (g) "Cost Sharing Agreement" refers to the "Agreement in Principle Concerning the  
2 Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata  
3 Project Cost Sharing" dated June 30, 1986, between the United States, the State of Colorado,  
4 certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute  
5 Tribe, and the Southern Ute Indian Tribe, **as amended**.

6 (h) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water  
7 Rights Final Settlement Agreement" dated December 10, 1986 among the United States, the  
8 State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the additional  
9 governmental and private entities signatory thereto, **as implemented by Public Law 100-585 as**  
10 **amended by Public Law 106-554**.

11 **Revise** (i) "Administrative Costs" are all costs which are not directly identified to the  
12 construction of specific Project Works. These costs are incurred centrally and charged to the  
13 Project on the basis of the utilization of Reclamation labor. The limitation in Article 8(g) shall  
14 not apply to costs directly identified to the construction of Project Works such as right-of-way  
15 appraisals, land acquisition, designs, inspections, and payments to Contractors.

16 (j) **"Consultation"** means the United States ~~and Commission~~ shall **notify and**  
17 **confer with the Commission-Contractor** regarding significant decisions **pertaining to this**  
18 **contract**, ~~that may affect the design, construction, allocation of costs, or operation and~~  
19 ~~maintenance of Project Works. Every reasonable effort will be made to reach consensus~~  
20 ~~decisions. In the event that no consensus cannot be reached and the United States makes a~~  
21 ~~decision, Commission appeals are available~~ **to the extent allowed under applicable laws.**  
22 ~~under the Administrative Procedures Act (5 U.S.C. Sections 500 et seq. and 701 et seq.).~~

23 (k) "San Juan River System" means the San Juan River and its tributaries.

24 (l) ~~"Phase One Operation and Maintenance Facilities"~~ means those facilities  
25 necessary to support operations and maintenance work, for example operation and maintenance  
26 headquarters, office space, shop for repair of equipment, storage place for supplies, and  
27 equipment yard.

28 (m) "Repayment Obligation" means final reimbursable construction costs  
29 exceeding ~~\$12,800,000~~ allocated to municipal and industrial uses associated with the  
30 construction of ~~Phase One~~ Project Works.

(n) “Relinquished Water” means that portion of project water storage available to the Secretary for allocation to other Project purposes if the Commission elects not to enter into a new agreement for any additional repayment established in the final cost allocation as provided in Section 6(a)(3)(B) of Public Law 106-554.

#### PROJECT WORKS

2. Subject to the terms and conditions of this and other applicable contracts related to this Project, the United States will construct the following ~~Phase One~~ Project Works and appurtenant facilities, acquire lands, and provide certain moveable property and equipment to the Project Operator needed for Project operation and maintenance as, in the opinion of the United States, are necessary for Project purposes, without being limited by enumeration and within the limit of funds available by the Congress and the contracting parties.

(a) ~~(Moved to Art. 8 The Commission will share only in the allocable costs of the joint Project Works) up to the cost of their single purpose alternative. The joint~~ The Project Works, which are presently identified as the following:

(1) Ridges Basin Dam and Reservoir and appurtenant facilities, the main storage facility for the Project, will be located on Basin Creek in Ridges Basin approximately 3 miles southwest of Durango, Colorado. The reservoir will have an initial capacity of approximately 120,000 280,000 acre-feet.

(2) Durango Pumping Plant and ~~Power Transmission~~ appurtenant facilities will be located adjacent to the Animas River and will pump Project Water from the Animas River to Ridges Basin Reservoir and to other Project Water users.

(3) Ridges Basin Inlet Conduit and appurtenant facilities will extend from the Durango Pumping Plant to Ridges Basin Reservoir. ~~The Conduit will be capable of reversing flow from Ridges Basin Reservoir to the Durango Pumping Plant.~~

(4) ~~Phase One~~ Operation and Maintenance Facilities will be constructed as determined necessary by the United States, after consultation with the Project Construction Coordinating Committee operator, when the United States is not operating the Project Works Animas-La Plata Water Conservancy District, for the required operation and maintenance of ~~Phase One~~ Project Works.

1           ~~(5) Ridges Basin Pumping Plant and Power Transmission Facilities will pump~~  
2 ~~water from Ridges Basin Reservoir into the Dry Side Canal and to other Project Water users.~~  
3 ~~Ridges Basin Pumping Plant will be located on the western edge of Ridges Basin Reservoir.~~

4           ~~(6) Long Hollow Tunnel will be located on the Dry Side Canal about 3.1 miles~~  
5 ~~from the head of the canal. The tunnel will be approximately 3.2 miles long.~~

6           ~~(7) Dry Side Canal Phase One will extend from Ridges Basin Pumping Plant to~~  
7 ~~the Dry Side Gravity Lateral. The canal will be approximately 22 miles long.~~

8           ~~(b) In keeping with the purposes of the Project, the United States and the~~  
9 ~~Commission shall **consult** and may change the location or size of Project Works, or may~~  
10 ~~eliminate works or add works to those described above. Nothing contained herein shall be~~  
11 ~~construed to indicate the order in which the works described in subarticle (a) hereof will be~~  
12 ~~constructed or acquired.~~       **Review – Use both old and new (b) with some revisions ?**

13           **(bc)** The United States, after **consultation** with the Commission, shall have the right  
14 at any time ~~after construction~~ to increase the capacity of the Project Works or any unit or feature  
15 thereof for other than project purposes without additional capital or operation and maintenance  
16 cost to the Commission; Provided, That the Commission's use of Project Water shall not be  
17 impaired thereby. The right of use of such increased capacity is reserved to the United States.

18           **(cd)** Any additions, changes to, or operation of Project Works or changes in use of  
19 water from that stated in the Animas-La Plata Final **Supplemental** Environmental **Impact**  
20 Statement **(FSEIS)** dated July **2000**~~1, 1980~~ and subsequent **Record of Decision** dated **September**  
21 **25, 2000**, will be subject to further compliance with the National Environmental Policy Act and  
22 must be approved by the Secretary of the Interior.

23           **(d)** Construction and operation of the Project will be in accordance with the  
24 Environmental Commitments ~~Plan~~ dated February 4, 1987 ~~in or~~ **Chapters 4 and 5 of the**  
25 **FSEIS.**

26           ~~(e) The United States will be responsible for taking any remedial measures required~~  
27 ~~to protect or restore the quality of Project Water delivered to the Commission under this contract~~  
28 ~~resulting from design or construction deficiencies with respect to Project Works constructed by~~  
29 ~~the United States, as determined by the United States after **consultation** with the Commission.~~



1 CONDITIONS PRECEDENT TO CONSTRUCTION

2 3. The United States shall be under no obligation to commence, or having commenced,  
3 to continue construction of Project Works necessary for the delivery of Project Water under this  
4 contract until:

5 (a) Moved to Article 7a

6 ~~(b) Adequate water rights for the Project are obtained and any conflicts between~~  
7 ~~private water rights and Project Water rights are resolved to the satisfaction of the United States.~~

8 ~~(c) The Commission has demonstrated the legal and financial capability to make the~~  
9 ~~contributions and payments required by this document by demonstrating that it is a legal entity~~  
10 ~~under state law, that has taxing authority either on its own or in conjunction with others, and that~~  
11 ~~contracting parties have the capacity to put water to beneficial use under New Mexico law.~~

12 **(ae) The June 30, 1986 Cost Sharing Agreement is amended by all parties to**  
13 **that agreement in order to make that agreement consistent with Public Law 106-554.**

14 **(bd) Any non-Tribal entity that desires to pay its capital obligations for its**  
15 **municipal and industrial water prior to construction pursuant to Public Law 106-554 must**  
16 **enter into such an agreement with the United States prior to the initiation of construction.**

17 **(ced)** The United States, before initiation of construction of any Project Works, shall  
18 notify the Commission in writing of any other agreements or conditions precedent that must be  
19 met prior to the construction of those Project Works; Provided, however, that no such conditions  
20 precedent shall be imposed unless such conditions precedent are mandated or required by Federal  
21 laws, State law, or policy promulgated pursuant thereto.

22  
23 PROJECT COORDINATING COMMITTEES

24 **4. Coordination of Project construction, operations, and Project Works**  
25 **maintenance activities will be accomplished through the establishment of two committees:**  
26 **one to focus on those activities associated with the construction of the Project Works, the**  
27 **other to oversee the operations and maintenance activities.**

28 **(a) The Project Construction Coordination Committee will be made up of**  
29 **representatives of those entities that have been identified by the 2000 Amendments to**  
30 **receive Project Water and the Bureau of Reclamation. This committee will provide**

1 coordination and consultation on the construction activities among all the project  
2 beneficiaries, seeking common understanding and consensus on decisions associated with  
3 such items as final plans for Project Works, project construction completion schedule, and  
4 Project construction costs. Upon Project completion, this committee will be dissolved.

5 (b) The Project Operations Committee will initially consist of representatives  
6 from those entities that have been identified by the 2000 Amendments to receive Project  
7 Water and the Bureau of Reclamation. Initially, this committee will determine the  
8 appropriate entity to contract with Reclamation for the operation and maintenance of the  
9 Project Works and the development of a common understanding among the project  
10 beneficiaries of the appropriate level of annual operation, maintenance, and replacement  
11 (OM&R) activities to be performed on the Project Works to assure the Project's long term  
12 operational integrity and public safety. Ultimately, this committee will oversee the ongoing  
13 operations, maintenance, and replacement activities of the Project Works, providing  
14 consultation and coordination among the committee members on such items as annual  
15 OM&R funding, maintenance schedules, and public safety issues.

16 ~~4. Coordination of Project construction, operations and distribution of Project~~  
17 ~~Water from Project storage will be accomplished through a Project Construction~~  
18 ~~Coordinating Committee and a separate Project Operations Committee.~~

19 ~~(a) The Project Construction Coordinating Committee will provide~~  
20 ~~coordination among all project sponsors during construction of the project.~~

21 ~~(b) The Project Operations Committee will coordinate operations of the Project~~  
22 ~~among all beneficiaries that receive project water.~~

23 ~~4. (a) Coordination of Project construction, operations and distribution of Project Water~~  
24 ~~will be accomplished through a Project Coordinating Committee. The Project Coordinating~~  
25 ~~Committee will initially consist of the following representatives: from those entities that have~~  
26 ~~entered into a repayment contract with the United States for the Animas-La Plata Project.~~

27 ~~(1) five representatives from the San Juan Water Commission (New Mexico) or a~~  
28 ~~representative from Aztec, Bloomfield, Farmington, San Juan County, and the Rural Water Users~~  
29 ~~Association should the San Juan Water Commission be dissolved;~~

30 ~~(2) five representatives from the Animas-La Plata Water Conservancy District~~

1 ~~(Colorado), at least two of whom are irrigators;~~

2 ~~————— (3) five representatives from the Southern Ute Indian Tribe (Colorado);~~

3 ~~————— (4) five representatives from the Ute Mountain Ute Tribe (Colorado);~~

4 ~~————— (5) one representative from the La Plata Conservancy District (NM);~~

5 ~~————— (6) one representative from the Navajo Indian Tribe (Shiprock, New Mexico);~~

6 ~~and~~

7 ~~————— (7) one representative of the United States Bureau of Reclamation.~~

8 ~~———— The membership of the committee may be revised under guidelines established in the~~  
9 ~~by-laws approved by the Committee.~~

10 ~~————— (b) The Project Coordinating Committee shall meet to unanimously establish~~  
11 ~~by-laws immediately following execution of those repayment contracts considered as~~  
12 ~~prerequisites to initiating irreversible construction on the Project. A unanimous decision will be~~  
13 ~~made when twelve or more of the voting representatives or their alternates are present at a~~  
14 ~~meeting noticed in writing 30 days in advance, and all present vote in agreement. The by-laws~~  
15 ~~shall provide all necessary organizational details for the Project Coordinating Committee subject~~  
16 ~~to the provisions in the entities' contracts with the United States. The by-laws shall also provide~~  
17 ~~for subcommittees, for development and administration of any necessary operating agreements~~  
18 ~~for specific Project Works, and for operation, maintenance, and replacement cost allocation for~~  
19 ~~uses of Project Water.~~

20 ~~————— (c) The Project Operator shall annually formulate a budget and a plan for major~~  
21 ~~operation, maintenance, and replacement activities on the Project and submit such budget and~~  
22 ~~operating plans to the Project Coordinating Committee. The Project Coordinating Committee~~  
23 ~~shall meet as often as necessary, but not less than once annually, to assure and approve equitable~~  
24 ~~allocations of operation, maintenance, and replacement costs; approve major operation,~~  
25 ~~maintenance, and replacement activities; coordinate project operations among the users of~~  
26 ~~Project Water; and comply with provisions of all existing and future water compacts, especially~~  
27 ~~the Animas-La Plata Project Compact (82 Stat. 898), the Upper Colorado River Basin Compact~~  
28 ~~(63 Stat. 31), and the Cost Sharing and Water Rights Agreements. Provided, that with respect to~~  
29 ~~annual costs as are estimated for electrical power to pump water to Ridges Basin Reservoir, each~~  
30 ~~contracting entity shall be required to pay no more than a proportionate share of the total~~

1 ~~electrical power costs that relate directly to the actual amount of water used by that particular~~  
2 ~~entity from the reservoir for any given year. In addition, each contracting entity will pay a~~  
3 ~~proportionate share of the electrical power costs associated with replenishing an estimated 2,500~~  
4 ~~acre feet of reservoir storage water lost to evaporation each year. The electrical power costs~~  
5 ~~associated with the evaporation water and all other operation, maintenance, and replacement~~  
6 ~~costs assigned to the Durango Pumping Plant, Ridges Basin Inlet Conduit, and Ridges Basin~~  
7 ~~Dam and Reservoir will be divided proportionately among all of the contracting entities based on~~  
8 ~~their respective Project Water allotments.~~

9  
10 MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

11 5. (a) Water delivered to the Commission pursuant to this contract shall ~~be on a~~  
12 ~~perpetual basis and shall~~ be measured **and delivered** at the outlet works of Ridges Basin Dam  
13 and in the Animas River at the Durango Pumping Plant with measuring facilities installed by the  
14 United States as a part of the Project. Water delivered to the Contractor's Animas and San Juan  
15 River users pursuant to this contract shall be measured at those user's points of diversion on the  
16 Animas and San Juan Rivers. The water diverted from the San Juan River system will be  
17 replaced with Project Water released or bypassed from the Durango Pumping Plant or Ridges  
18 Basin Reservoir. Sufficient water will be delivered to ensure that the Commission annually  
19 receives **a share of 20,800** ~~30,800~~ acre-feet of water available for diversion at any approved  
20 points of diversion on the San Juan River system selected by potential users of this water.

21 (b) The United States will not be responsible for the control, carriage, handling, use,  
22 disposal, or distribution of water furnished the Commission from the outlet works of Ridges  
23 Basin Dam ~~or Durango Pumping Plant~~ to the place of final use. The Commission will hold the  
24 United States harmless on account of damage or claim of damage of any nature whatsoever  
25 arising out of or connected with the control, carriage, handling, treatment, use, disposal, or  
26 distribution of water by the Commission below the points of measurement.

27 (c) All facilities required for taking water furnished under this contract from the  
28 points of delivery and putting it to use by the Commission and its subcontractors will be  
29 acquired, constructed or installed, and operated and maintained by the Commission or its  
30 subcontractors at its sole expense.

ALLOTMENT AND USE OF PROJECT WATER

6. (a) The Commission shall have an ~~an~~ permanent allocation to a share of the average annual yield from Project Water sources based on an annual allotment of ~~20,800-30,800~~ acre-feet of municipal and industrial water delivered at the users' points of diversion, **except as otherwise provided under Subarticle 8(e) herein. The Commission's diversion allotment of 20,800 acre-feet yields an average annual depletion amount of 10,400 acre-feet. The project provides annual storage for \_\_\_\_\_ acre-feet of this water with the remainder of the project water provided directly from the Animas River.** The water furnished shall be put to beneficial use under ~~Permits Nos. 4487 through 4501 issued required~~ by the New Mexico State ~~Engineer Statutes~~. ~~Municipal and industrial commitments shall be delivered in full and irrigation and other uses shall share shortages as may occur in equal percentages; Provided, however, The~~ Commission may be limited, after **consultation**, in any year to take no more than ~~55~~<sup>48</sup> percent of its total water allotment during the period from June 1 to September 30. If this limitation occurs, the Commission may take the remaining ~~45~~<sup>52</sup> percent of its water allotment during the remaining months of the year. The above limitation amount of ~~55~~<sup>48</sup> percent may be adjusted as necessary by the Project ~~Operations-Coordinating~~ Committee, after **consultation** with the Commission.

(b) ~~The Commission's Unused Excess~~ Project **Stored** Water in any year shall be retained in Ridges Basin Reservoir to the extent of capacity available **up to \_\_\_\_\_ acre-feet**, and shall be available for ~~general Project~~ **the Commission's** use during succeeding years. ~~No holdover rights in the Project reservoir for water not used in any year shall be granted to the Commission, any individual or subcontractor, including irrigation districts, associations, or municipalities.~~ The Commission shall have the opportunity to purchase excess Project **Storage** Water on similar terms and at a price no higher than that offered other similar **from other** users.

(c) Moved to Article 7b

(~~cd~~<sup>e</sup>) Any use of water other than that contemplated in the **July 2000** Final **Supplemental** Environmental **Impact** Statement ~~and the Record of Decision dated September 25, 2000~~ for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

## WATER RIGHT PROVISIONS

7. (abc) As provided by Section 15 of Public Law 106-554, upon the request of the State Engineer of the State of New Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S. C. 1531 et seq.) to the use of the water involved.

**(b) Upon assignment of its interest in State Engineer Permit No. 2883 as described in (a) above, the Commission shall diligently work to put their water to beneficial use and file proofs of beneficial use under New Mexico State law as may be necessary to develop the water in the permit assigned. The Commission will protect the Project Water rights and in case a dispute arises as to the character, extent, priority or validity of the rights of the Commission to use or permit use of Project Water, the Commission shall promptly bring and diligently prosecute and/or defend judicial proceedings for the determination of such dispute and shall take all other measures necessary toward the defense and protection of the Commission's water.**

(c) The construction of the facilities described in section 6(a)(1)(A) of Public Law 106-554, the allocation of the water supply from those facilities to the Colorado Ute Tribes as described in that section, and the provision of funds to the Colorado Ute Tribes in accordance with section 16 and the issuance of an amended final consent decree as contemplated in subsection (c) herein shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

~~(da)~~ An amended-proposed consent decree-is will be prepared by the Colorado parties that signed the Cost Sharing Agreement and the Water Rights Agreement, the United States, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This proposed consent decree shall be submitted to the District Court for Water Division No. 7, State

of Colorado, and duly issued by the court.

**METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS  
UP TO \$12,800,000 UNDER COST SHARING AGREEMENT**

~~7. (a) The Cost Sharing Agreement is attached as Exhibit "A" and hereby made a part of this contract. Pursuant to Article 3.(c) of the Cost Sharing Agreement, \$12,800,000 will be available from the Commission to the United States to fund the estimated cost of developing the New Mexico non-Indian municipal and industrial water share of Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit and related facilities as defined in Article 2(a) herein needed to provide municipal and industrial water to non-Indians in New Mexico. Such funds shall be provided according to a schedule of applicable actual costs related to construction of these New Mexico municipal and industrial water facilities.~~ **Refer to C/S Agreement ?**

**8. (a) As provided by Section 6(a)(3)(A) of Public Law 106-554, the Commission's capital repayment obligations for the facilities described in paragraph (1)(A)(i) of that law may be satisfied upon the payment in full of the non-Tribal water capital obligations prior to the initiation of construction-(define?). The Commission's allocable capital obligations for their municipal water storage are estimated in the May 2001 Interim Cost Allocation to be \$6,916,722 and this estimate is based on October 2001 price levels. However, it is recognized by both the Commission and the United States that because of inflationary increases in the cost of construction, as indicated by engineering cost indexes applicable to the type of construction involved, the project costs may increase above this the estimate over the construction period. To account for these increases and meet the definition of up-front payment in full as specified in Section 6(a)(3)(A) of Public Law 106-554, the Commission and the United States agree to use an estimate of the up-front payment based on the May 2001 Interim Cost Allocation amount of \$6,916,722. At an estimated inflation rate of \_\_\_\_ percent, through a construction period of 7 years, the base capital obligation of \$6,916,722 is estimated to grow to \$\_\_\_\_\_ at construction completion. The Commission agrees to pay this indexed amount of \$\_\_\_\_\_ to an acceptable escrow account prior to the initiation of irreversible construction-(define?), to satisfy the up-front payment in full requirement of Section 6(a)(3)(A) of Public Law 106-554.**

(b) The escrow account funds will be available to fund the estimated annual cost of constructing the Commission's share of the Project Works as defined in Article 2(a) herein. Payments ~~from Escrow~~ will be made ~~to the United States~~ quarterly from the escrow account concurrent with the construction of Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit and related facilities for storing and delivering ~~New Mexico non-Indian~~ **the Commission's** municipal and industrial water. The quarterly payments will be made in advance and due 10 days prior to the beginning of ~~the~~ **each quarter that starts in January, April, July, and October of each year.** However, payments may be advanced and due 5 days prior to the beginning of the quarter if electronic transfer methods are utilized in accordance with Treasury regulations and Article 8(h). The payment amounts will be based on the annual construction schedule prepared by the United States and provided to the Commission. ~~Any interest from the escrow account shall be returned to the Commission.~~ (Need more details on Escrow Payments)

(c) The United States, in consultation with the Commission, may determine at any time that the construction costs relating to the Project Storage to be made available under this contract will exceed \$ (Up-front Amount) and shall give the Commission written notice thereof. The Commission will be allowed to make additional contribution(s) to the escrow account in order to cover any increases in the estimated allocable capital obligations for its municipal water storage.

~~(d)~~ **At the end of the construction period, a final cost allocation will be performed by the Secretary pursuant to Section 6(a)(3)(B) of Public Law 106-554. Modification, expansion or unforeseen engineering costs in addition to the current design and plan for the storage and delivery of the 20,800 acre-feet of Project Water to the Commission shall not be allocated to the Commission's share of the reimbursable construction costs unless they are determined to be necessary by the Secretary after Consultation. The Commission will share only in their allocable costs of the joint Project Works. The United States shall give the Commission written notice of the Commission's total capital obligations as established by the final cost allocation. In the event the final cost allocation establishes that the total capital obligation of the Commission is more than the up-front payment amount of \$ \_\_\_\_\_, then the Commission will have the option to pay the additional amount, with appropriate Interest During Construction charges, \_\_\_\_\_**



1 days from the date of written notice as an alternative to repaying this additional debt with  
2 amortization interest over a repayment period as described in Subarticle 8(e) below. In the  
3 event the final cost allocation establishes that the total capital obligation of the Commission  
4 is less than the up-front payment amount of \$\_\_\_\_\_, then the United States will refund  
5 the difference to the Commission within \_\_\_\_ days.

6 (ed) After the \_\_\_\_-day final payment option established in Subarticle 8(d) has  
7 expired, the construction costs that are in addition to the up-front payment amount of  
8 \$\_\_\_\_\_, and the associated Interest During Construction, shall become a  
9 “Repayment Obligation” of the Commission. The United States will assign this Repayment  
10 Obligation to a pro rata share of the Commission’s total project water supply of 20,800  
11 acre-feet and will issue a repayment block notice, as described in Article 9 herein, to the  
12 Commission prior to their receiving any of the pro rata supply assigned to the additional  
13 repayment obligation. The Repayment Obligation on the assigned pro rata supply will be  
14 paid in annual installments due on or before January 10 of each year and in accordance  
15 with an annuity due payment schedule or schedules issued by the United States. The  
16 Repayment Obligation above shall be repaid within a 25 year period, unless as specified  
17 below and shall accrue interest on the unpaid portion at the rate to be established pursuant  
18 to the provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the  
19 Act of June 27, 1960 (74 Stat. 255).

20 The Commission may elect to defer the Repayment Obligation and use of the  
21 assigned pro rata water supply pursuant to the provisions of the Water Supply Act of 1958  
22 (72 Stat. 297), as amended, and shall be as follows: (i) no principal or interest payments  
23 need to be made with respect to storage of water for future water supply as provided by the  
24 Water Supply Act until such supply is first used, but such deferment of repayment shall  
25 not exceed 10 years; (ii) no interest shall be charged on such cost until such supply is first  
26 used, but in no case shall the interest-free period exceed 10 years; and (iii) once repayment  
27 is initiated, the sum of the interest and principal shall be paid in annual installments over  
28 the remainder of the repayment period, however, the total repayment period, including  
29 deferral, cannot exceed 50 years.

1                   **(fe) If the Commission elects not to repay the Repayment Obligation described**  
2 **in Subarticle 8(e) to the United States, then the Commission relinquishes use and**  
3 **contractual right to the water supply assigned pro rata to the Repayment Obligation and**  
4 **such supply will be available to the Secretary to be allocated to other purposes as provided**  
5 **by Section 6(a)(3)(B) of Public Law 106-554. Continued on Page 18**

6  
7                   METHOD OF REPAYMENT FOR PROJECT CONSTRUCTION  
8                   COSTS EXCEEDING \$12,800,000

9           8. ~~(a) The Commission agrees to pay the United States allocable construction costs~~  
10 ~~which exceed the \$12,800,000 paid pursuant to Article 7. This amount is the Commission's~~  
11 ~~remaining proportionate share of the final reimbursable construction costs allocated to municipal~~  
12 ~~and industrial uses associated with the construction of Project Works necessary for storage and~~  
13 ~~delivery of water pursuant to this contract, plus interest pursuant to subarticle © herein. The~~  
14 ~~Commission also agrees to pay any amounts justified by reasons of ordinary fluctuations in the~~  
15 ~~cost of construction as indicated by engineering cost indexes applicable to the type of~~  
16 ~~construction involved and increases resulting from enlargement or changes of Project Works.~~  
17 ~~Modification, expansion, or change order costs shall not be allocated to the Commission's share~~  
18 ~~of the reimbursable construction costs unless they are determined to be necessary by the~~  
19 ~~Secretary after **Consultation**, in addition to the current design and plan for the Project, for the~~  
20 ~~storage and delivery of the 30,800 acre feet of Project Water to the Commission.~~

21 ~~——— The United States may determine at any time that the construction costs relating to~~  
22 ~~Project Municipal and Industrial Water to be made available under this contract will exceed~~  
23 ~~\$12,800,000, and shall give the Commission written notice thereof. Such construction costs shall~~  
24 ~~become a Repayment Obligation of the Commission and is payable by the Commission in~~  
25 ~~advance of receiving Project Municipal and Industrial Water associated therewith in annual~~  
26 ~~installments due on or before January 10 of each year and in accordance with an annuity due~~  
27 ~~payment schedule or schedules issued by the United States. However, the Commission's total~~  
28 ~~obligation for all Project costs allocated to municipal and industrial water under this contract will~~  
29 ~~not exceed \$16,640,000 (\$12,800,000 plus 30 percent of \$12,800,000).~~

30 ~~——— (b) The Commission's total Repayment Obligation pursuant to this Article, if any,~~  
31 ~~and any notice with respect thereto, is subject to adjustments depending on the facilities~~

constructed and on the final allocation of construction costs and allotments of the Project Water to irrigation and municipal and industrial users which will be made by the Secretary in accordance with Reclamation Law.

—————(c) The Commission's Repayment Obligation, plus simple reimbursable interest accrued during construction, for that portion that exceeds \$12,800,000, allocated to municipal and industrial water as described in Subarticle (a) above shall accrue interest on the unpaid portion at the rate to be established pursuant to the provision of Section 5 (f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the Act of June 27, 1960 (74 Stat. 255).

—————(d) The municipal and industrial Repayment Obligation referred to in this Article is a general obligation of the Commission as outlined in Article 18 herein, however, regardless of the provisions stipulated by Article 18(b), the United States shall make available to the Commission Project Municipal and Industrial Water for entities which are not in arrears in their payments to the Commission when these payments are advanced to the United States. The Commission's municipal and industrial Repayment Obligation shall be paid to the United States in one of the following methods agreed to by both parties:

—————(1) The Repayment Obligation, if any, is repayable in advance of receiving Project Municipal and Industrial Water associated therewith by the Commission in not more than 50 annual installments with interest, as described in Article 8© herein, due on or before January 10 of each year and in accordance with the payment schedule or schedules included in the repayment notice issued by the United States for that portion that exceeds \$12,800,000, or

—————(2) If the Commission elects to defer taking Project Municipal and Industrial Water when it first becomes available as provided in (1) above, repayment shall be governed by the provisions of the Water Supply Act of 1958 (72 Stat. 297) as amended, and shall be as follows: (i) no principal or interest payments need to be made with respect to storage of water for future water supply as provided by the Water Supply Act until such supply is first used, but such deferment of repayment shall not exceed 10 years; (ii) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed 10 years; and (iii) once repayment is initiated, the sum of the interest and principal shall be paid in annual installments over the remainder of the 50 year repayment period.

—————Payment for each block shall commence on January 10 of the year water is first

1 used, but such deferral shall not exceed a period of 10 years as provided above and payment shall  
2 be made each year after the 10th year of deferral, whether or not the Commission takes the water  
3 allocated for its use. All Project Municipal and Industrial Water made available by the United  
4 States shall be included in block notices with their accompanying payment schedule. The  
5 payment schedule shall specify, among other things, the annual amount that the Commission is to  
6 collect and pay to the United States for Project Municipal and Industrial Water.

7 ~~—————(c) The United States may also determine at any time that the construction costs~~  
8 ~~relating to Project Municipal and Industrial Water to be made available under this contract will~~  
9 ~~exceed \$16,640,000, and shall give the Commission written notice thereof. The United States~~  
10 ~~will then **consult** with the Commission, and continuation of construction of Project Works~~  
11 ~~related to Project Municipal and Industrial Water may be contingent upon execution of an~~  
12 ~~amendatory repayment contract or other financial arrangement to cover any increased obligation~~  
13 ~~above \$16,640,000. Such "other financial arrangement" includes, but is not limited to, the~~  
14 ~~Commission's right to receive a pro rata share of the 30,800 acre-feet of Project Municipal and~~  
15 ~~Industrial Water based on the amount of funds the Commission has committed to pay through~~  
16 ~~cost sharing and repayment versus the final total construction costs allocated to the 30,800~~  
17 ~~acre-feet of Project Water. In the event that agreement is not reached within 240 days from the~~  
18 ~~sending of said notice, the United States may cease construction of Project Works related to~~  
19 ~~Project Municipal and Industrial Water, and the Commission shall be responsible for the~~  
20 ~~Repayment Obligation only. Provided, however that termination of the aforesaid construction~~  
21 ~~may be delayed by extending said 240 day period an additional 120 days if the Commission and~~  
22 ~~the United States determine that reasonable cause exists. Such repayment shall be described in a~~  
23 ~~bill of collection and payment schedule issued by the United States.~~

## 24 **Article 7 Continued**

25 (gf) It is agreed that during construction every attempt will be made to keep  
26 administrative costs at or below 25 percent of the final construction cost of the total Project.  
27 Once construction begins, the United States will annually report to the Commission the dollar  
28 amount of administrative costs and all other construction costs.

29 (hg) Upon request, the United States will annually **consult** with the Commission  
30 concerning the allocation of Phase One construction costs and any interest during construction to

1 be payable by the Commission under this contract. **The Use of Facilities Procedure is the**  
2 **methodology used to allocate costs for the Project, and once this Procedure is established**  
3 **for the Project, it will not be changed for the administration of this Contract.** ~~The United~~  
4 ~~States will also consult with the Commission in advance concerning any future changes to the~~  
5 ~~cost allocation procedures used to determine the Commission's Project costs under this contract.~~

6 (ih) All payments required under this contract are due on the specified due date and  
7 by the method mutually agreed upon between the United States and the Commission. The agreed  
8 method of payment ~~may include checks,~~ **will be made by electronic fund** ~~wire transfers, or~~  
9 ~~other types of payment to be determined~~ ~~unless otherwise specified by the United States.~~

#### 11 METHOD FOR ESTABLISHING BLOCKS FOR PROJECT REPAYMENT

12 9. (a) When the Project Works defined in Article 2(a) are completed, tested, and the  
13 Project Water becomes available for use by the Commission, the United States shall, after  
14 **consultation**, establish delivery blocks and apportion to each block an appropriate part of the  
15 Commission's allocated cost based on the nature and amount of water use therein. The United  
16 States shall give the Commission written notice, referred to herein as the "block notice," at least  
17 12 months prior to the date when water will be first delivered to the affected block. The block  
18 notice shall contain:

- 19 (1) A description of the entities included in the block.
- 20 (2) The quantity of Project Water available to the Commission for the block.
- 21 (3) A designation of that part of the Commission's municipal and industrial cost  
22 allocation apportioned to the block, pursuant to Articles ~~7 and~~ 8 herein.
- 23 (4) A payment schedule for repayment of those costs which exceed the  
24 Commission's up-front funding, if any, for the municipal and industrial water available in such  
25 block, including a breakdown of the amount and due date of each payment to be paid from  
26 revenues received by the Commission from municipal and industrial water users and from all  
27 other revenues available to the Commission.

28 (b) Each block notice and amendment thereto shall become a part of this contract.

PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

10. (a) Operation, maintenance, and replacement costs allocated to the Commission's municipal and industrial water will be a proportionate share of the total annual operation, maintenance, and replacement expenses actually incurred by the Project Operator in the operation, maintenance, and replacement of Ridges Basin Dam and Reservoir, Durango Pumping Plant, Ridges Basin Inlet Conduit **based on the annual amount of water supply storage provided to the Commission.** ~~and related storage and delivery facilities for New Mexico municipal and industrial water.~~ The Commission's Project Water allotment of ~~30,800~~ **20,800** acre feet represents ~~17.9~~ percent of the total Project Water supply made available under ~~Phase One~~ of the Project. Based on an operations study prepared for the Project, the Commission would draw an average of approximately ~~800~~ acre feet of their Project Water allotment from storage in Ridges Basin Reservoir. The Commission's proportionate share of the annual operation, maintenance and replacement costs, using a ~~1987~~ **2001** estimate of such costs for the Durango Pumping Plant, Ridges Basin Inlet Conduit, and Ridges Basin Dam and Reservoir, **and appurtenant facilities,** and the prescribed allocation of annual costs ~~as presented in Article 4© herein,~~ would be **\$50,645** ~~59,554~~. This figure includes ~~\$5,880~~ for direct pumping costs and ~~\$53,674~~ for all other costs. ~~The above operation, maintenance, and replacement costs are based on the May 2001 Interim Cost Allocation and will be subject to the final cost allocation.~~ It is expressly understood that these figures are an estimate only, and are subject to changes from year-to-year resulting from fluctuations in the costs that make up the estimate and the actual amount of Project Water drawn from Ridges Basin Reservoir by the Commission.

(b) The Commission agrees to pay the Project Operator, in advance its proportionate share of the operation, maintenance, and replacement costs allocated to said Project Works. Operation, maintenance, and replacements costs shall be allocated by the Project ~~Coordinating~~ **Operations** Committee pursuant to Article 4. An operation, maintenance, and replacement charge notice shall be furnished annually by the Project Operator, which amount will be paid by the Commission in advance. If the funds advanced by the Commission under this article are less than the actual cost of operation, maintenance, and replacement properly chargeable to the Commission for the period advanced, a supplemental notice will be issued and the

1 Commission shall advance such additional funds by the date specified in the supplemental notice.  
2 If the actual costs are less than the funds advanced, an appropriate adjustment will be made in the  
3 notice issued the next succeeding period.

4  
5 DISPOSAL OF PROJECT WATER DURING CONSTRUCTION  
6 BY UNITED STATES  
7

8 11. (a) Prior to the completion of the Project Works as defined in Article 2(a) and upon  
9 the execution of this contract, the Commission may use the water identified herein upon approval  
10 by and subject to any applicable terms and conditions imposed ~~under rules and regulations~~ by the  
11 New Mexico State Engineer and the United States. The United States has no objection to such  
12 use of the water until such water is necessary for Project purposes. No other approvals shall be  
13 required. Acceptance of water by the Commission under this subarticle shall in no way trigger an  
14 obligation to pay for Project Works under construction pursuant to Article 8.

15 (b) Upon completion and initial testing of the Project Works as defined in Article  
16 2(a), and at any other subsequent time, Project municipal and industrial water which is not made  
17 available to the Commission as provided in Articles 6 and 9 herein or under provisions of  
18 Subarticle (a) above, may be disposed of by the United States at terms and charges fixed by the  
19 United States. The charges shall be sufficient to at least cover the operation, maintenance, and  
20 replacement costs appropriate for such water delivery. Payment for use of such water shall be in  
21 advance and the proceeds shall be applied to operation and maintenance expense and other  
22 appropriate accounts as determined by the United States, and shall accrue to the benefit of the  
23 United States. The Commission shall, however, have the first opportunity to purchase said  
24 Project Water at the price and terms offered.

25  
26 WATER SHORTAGES, WASTE, SEEPAGE, AND RETURN FLOWS

27 12. ~~On account of drought or uncontrollable forces, there may occur in any year a~~  
28 ~~shortage in the total annual quantity of water available for furnishing to the Contractor by the~~  
29 ~~United States pursuant to this contract. In no event shall any liability accrue against the United~~  
30 ~~States or any of its officers, agents, employees, or its assigns for any damage, direct or indirect,~~  
31 ~~arising from such shortages.~~ **There may occur at times during any year a shortage in the**

1 quantity of water available for furnishing to the Commission through and by means of the  
2 Project, but in no event shall any liability accrue against the United States or any of its  
3 officers, agents, or employees for any damage, direct or indirect, arising from a shortage,  
4 on account of errors in operation, drought, or any other causes. In any year in which there  
5 may occur a shortage from any cause, the United States reserves the right to apportion the  
6 available water supply among the Commission, Tribes, and others entitled to receive water  
7 from the Project in accordance with conclusive determinations of the Contracting Officer.

8  
9 LEVY OF ASSESSMENTS, TOLLS AND CHARGES

10 13. The Commission shall, to the extent allowed by law, cause to be levied and collected  
11 all necessary assessments, tolls, and other charges and will use all of the authority and resources  
12 of the Commission to meet the obligations of the Commission specified herein, to make in full  
13 all payments to be made pursuant to this contract on or before the date such payments become  
14 due, and to meet its other obligations under this contract.

15  
16 COVENANT AGAINST CONTINGENT FEES

17 14. The Commission warrants that it has not employed or retained any person or selling  
18 agency to solicit or secure this contract upon an agreement or understanding for a commission,  
19 percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established  
20 commercial or selling agencies maintained by the Commission for the purpose of securing  
21 business. For breach or violation of this warranty, the United States shall have the right to annul  
22 this contract without liability, or at its discretion, to add to the repayment obligation or  
23 consideration the full amount of such commission, percentage, brokerage, or contingent fee.

24  
25 ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

26 15. (a) The provisions of this contract shall apply to and bind the successors and assigns  
27 of the parties hereto, but no assignment or transfer of this contract or any right or interest therein  
28 shall be valid until approved in writing by the United States. ~~No contract made by the~~  
29 ~~Commission, the Cities, or the non-profit rural water associations relating to the delivery or~~  
30 ~~distribution of Project Water shall be valid until approved by the Regional Director of the Bureau~~



1 ~~of Reclamation.~~ Approval pursuant to this section shall be for the purpose of ensuring that any  
2 assignment, transfer or other contract complies with the terms of this contract. Approval shall  
3 not unreasonably be withheld.

4 (b) The Commission shall not receive any valuable consideration for such  
5 assignment in excess of previous payments by the Commission to the United States for water  
6 which had not been used and which is assigned to the assignee. The Commission shall not  
7 extract any brokerage, profits, commission or fee, from any person on the assignment of water to  
8 be delivered under this contract. In connection with any such assignment, the Chairman of the  
9 Commission shall certify to the United States that the assignment with respect to water delivery  
10 was without consideration except as provided above, and that no brokerage, profits, commission,  
11 fee, or other charge of any kind was charged to the assignee or any person acting on behalf of the  
12 assignee. Any exceptions to this article will be covered under a separate agreement.

#### 13 14 SEVERABILITY

15 16. (a) If any provisions of Articles 17 through 30~~29~~ are in conflict with Article 1  
16 through 16, then the provisions of Article 1 through 16 shall take precedence.

17 (b) If any provisions of the contract shall, for any reason be determined to be illegal  
18 or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall remain  
19 in full force and effect. Furthermore, any adjustments or variations to this contract necessitated  
20 by future negotiations with other water users can be accomplished by amending this contract.

21  
22  
23  
24 IN THE FOLLOWING ARTICLES THE COMMISSION SHALL BE KNOWN AS THE  
25 CONTRACTOR AND THE UNITED STATES AS THE CONTRACTING OFFICER.  
26

#### 27 28 CHARGES FOR DELINQUENT PAYMENTS 29

30 17. (a) The Contractor shall be subject to interest, administrative and penalty charges on  
31 delinquent installments or payments. When a payment is not received by the due date, the  
32 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due  
33 date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative  
34 charge to cover additional costs of billing and processing the delinquent payment. When a  
35 payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6  
36 percent per year for each day the payment is delinquent beyond the due date. Further, the

Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

18. (a) The obligation of the Contractor to pay the United States as provided in this contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Contractor through project facilities during any period in which the Contractor may be in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not furnish water made available pursuant to this contract for parties which are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

#### ~~CONFIRMATION OF CONTRACT~~

~~19. The Contractor, after the execution of this contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of New Mexico confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding to the Contractor. This contract shall not be binding on the United States until such final decree has been secured.~~

#### NOTICES

**1920.** Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, **125 South State Street, Room 6107, P. O. Box 11568**, Salt Lake City, Utah 841**38-1102**, and on behalf of the United States, when mailed, postage prepaid, or delivered to the San Juan Water Commission, **800 Municipal Drive, Farmington** ~~112 S. Mesa Verde, Aztec, New Mexico 87401~~. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

1                   CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

2  
3           **2021.** The expenditure or advance of any money or the performance of any obligation of  
4 the United States under this contract shall be contingent upon appropriation or allotment of  
5 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
6 obligations under this contract. No liability shall accrue to the United States in case funds are not  
7 appropriated or allotted.  
8

9                   OFFICIALS NOT TO BENEFIT

10  
11           **2122.** No Member of or Delegate to Congress, Resident Commissioner or official of the  
12 Contractor shall benefit from this contract other than as a water user or landowner in the same  
13 manner as other water users or landowners.  
14

15                   CHANGES IN CONTRACTOR'S ORGANIZATION

16  
17           **2223.** While this contract is in effect, no change may be made in the Contractor's  
18 organization, dissolution, consolidation, merger or otherwise, except upon the Contracting  
19 Officer's written consent.  
20

21                   BOOKS, RECORDS AND REPORTS

22  
23           **2324.** The Contractor shall establish and maintain accounts and other books and records  
24 pertaining to administration of the terms and conditions of this contract, including: the  
25 Contractor's financial transactions, water supply data, water-use data; and other matters that the  
26 Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in  
27 such form and on such date or dates as the Contracting Officer may require. Subject to  
28 applicable Federal laws and regulations, each party to this contract shall have the right during  
29 office hours to examine and make copies of the other party's books and records relating to  
30 matters covered by this contract.  
31

32                   RULES, REGULATIONS, AND DETERMINATIONS

33  
34           **2425.** (a) The parties agree that the delivery of water or the use of Federal facilities  
35 pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the  
36 rules and regulations promulgated by the Secretary of the Interior under Reclamation law.  
37           (b) The Contracting Officer shall have the right to make determinations necessary to  
38 administer this contract that are consistent with the expressed and implied provisions of this  
39 contract, the laws of the United States and the State, and the rules and regulations promulgated  
40 by the Secretary of the Interior. Such determinations shall be made in **consultation** with the  
41 Contractor.  
42

43                   QUALITY OF WATER

44  
45           **2526.** The operation and maintenance of project facilities shall be performed in such  
46 manner as is practicable to maintain the quality of raw water made available through such  
47 facilities at the highest level reasonably attainable, as determined by the Contracting Officer.  
48 The United States does not warrant the quality of water and is under no obligation to construct or  
49 furnish water treatment facilities to maintain or better the quality of water.  
50  
51

## WATER AND AIR POLLUTION CONTROL

2627. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

## WATER CONSERVATION

2728. Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this contract, the Contractor shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 3-year intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based upon the conclusions of the review, the Contracting Officer and the Contractor shall **consult** and agree to continue or to revise the existing water conservation program.

## EQUAL OPPORTUNITY

2829. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared

ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

~~2930~~. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U. S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

**Check for other required Standard Articles**

1 IN WITNESS WHEREOF, the parties hereto have  
2 caused this contract to be duly executed as of the day and year first above written.  
3  
4

5  
6 Approved

THE UNITED STATES OF AMERICA

7  
8  
9  
10  
11 Regional Solicitor's Office

By \_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

12  
13  
14  
15  
16  
17 ATTEST:

SAN JUAN WATER COMMISSION, NEW MEXICO

18  
19  
20  
21 \_\_\_\_\_

By \_\_\_\_\_  
~~Chairman~~ **Representative**  
San Juan Water Commission

22  
23  
24  
25  
26  
27 ~~IN CONCURRENCE:~~

28  
29 ~~ANIMAS-LA PLATA WATER~~  
30 ~~CONSERVANCY DISTRICT~~  
31

32  
33  
34 By \_\_\_\_\_  
35 President  
36

37  
38 List of Attachments: Exhibit A - Cost Sharing Agreement, **as amended - ?**  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51